

§ 170.457

accepted a newer version of an adopted minimum standard.

(b) Applicability of an accepted new version of an adopted minimum standard.

(1) ONC-ATCBs are not required to test and certify Complete EHRs and/or EHR Modules according to newer versions of an adopted minimum standard accepted by the Secretary until the incorporation by reference provision of the adopted version is updated in the FEDERAL REGISTER with a newer version.

(2) Certified EHR Technology may be upgraded to comply with newer versions of an adopted minimum standard accepted by the Secretary without adversely affecting the certification status of the Certified EHR Technology.

§ 170.457 Authorized testing and certification methods.

An ONC-ATCB must provide remote testing and certification for both development and deployment sites.

§ 170.460 Good standing as an ONC-ATCB.

An ONC-ATCB must maintain good standing by:

(a) Adhering to the Principles of Proper Conduct for ONC-ATCBs;

(b) Refraining from engaging in other types of inappropriate behavior, including an ONC-ATCB misrepresenting the scope of its authorization as well as an ONC-ATCB testing and certifying Complete EHRs and/or EHR Modules for which it does not have authorization; and

(c) Following all other applicable Federal and state laws.

§ 170.465 Revocation of authorized testing and certification body status.

(a) *Type-1 violations.* The National Coordinator may revoke an ONC-ATCB's status for committing a Type-1 violation. Type-1 violations include violations of law or temporary certification program policies that threaten or significantly undermine the integrity of the temporary certification program. These violations include, but are not limited to: False, fraudulent, or abusive activities that affect the tem-

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porary certification program, a program administered by HHS or any program administered by the Federal government.

(b) *Type-2 violations.* The National Coordinator may revoke an ONC-ATCB's status for failing to timely or adequately correct a Type-2 violation. Type-2 violations constitute non-compliance with § 170.460.

(1) *Noncompliance notification.* If the National Coordinator obtains reliable evidence that an ONC-ATCB may no longer be in compliance with § 170.460, the National Coordinator will issue a noncompliance notification with reasons for the notification to the ONC-ATCB requesting that the ONC-ATCB respond to the alleged violation and correct the violation, if applicable.

(2) *Opportunity to become compliant.* After receipt of a noncompliance notification, an ONC-ATCB is permitted up to 30 days to submit a written response and accompanying documentation that demonstrates that no violation occurred or that the alleged violation has been corrected.

(i) If the ONC-ATCB submits a response, the National Coordinator is permitted up to 30 days from the time the response is received to evaluate the response and reach a decision. The National Coordinator may, if necessary, request additional information from the ONC-ATCB during this time period.

(ii) If the National Coordinator determines that no violation occurred or that the violation has been sufficiently corrected, the National Coordinator will issue a memo to the ONC-ATCB confirming this determination.

(iii) If the National Coordinator determines that the ONC-ATCB failed to demonstrate that no violation occurred or to correct the area(s) of non-compliance identified under paragraph (b)(1) of this section within 30 days of receipt of the noncompliance notification, then the National Coordinator may propose to revoke the ONC-ATCB's status.

(c) *Proposed revocation.* (1) The National Coordinator may propose to revoke an ONC-ATCB's status if the National Coordinator has reliable evidence that the ONC-ATCB committed a Type-1 violation; or